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DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA-2019-0018]

RIN 1660-ZA23

Hazard Mitigation Assistance: Building Resilient Infrastructure and Communities

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice, Request for Comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) is accepting comments on the *Building Resilient Infrastructure and Communities Policy*. This policy describes a new program authorized by recent legislation that allows FEMA to set aside 6 percent of estimated disaster expenses for each major disaster to fund a mitigation grant program to assist States, territories, Tribes, and local governments. The new program would supersede the existing Pre-Disaster Mitigation grant program and would promote a national culture of preparedness through encouraging investments to protect communities and infrastructure and strengthening national mitigation capabilities to foster resilience.

DATES: Comments must be received by [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments must be identified by docket ID FEMA-2019-0018 and may be submitted by one of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. Please note that this proposed policy is not a rulemaking and

the Federal Rulemaking Portal is being utilized only as a mechanism for receiving comments.

Mail: Regulatory Affairs Division, Office of Chief Counsel, Federal Emergency Management Agency, 8 NE Ste. 1007, 500 C Street, SW, Washington, DC 20472-3100.

FOR FURTHER INFORMATION CONTACT: Ryan Janda, Federal Emergency Management Agency, 400 C Street, SW, Washington, DC 20472, 202-646-2659, *Ryan.Janda@fema.dhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Instructions: All submissions received must include the agency name and docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *<http://www.regulations.gov>*, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy and Security Notice that is available via a link on the homepage of *www.regulations.gov*.

You may submit your comments and material by the methods specified in the ADDRESSES section. Please submit your comments and any supporting material by only one means to avoid the receipt and review of duplicate submissions.

Docket: The proposed guidance is available in docket ID FEMA-2019-0018. For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at *<http://www.regulations.gov>* and search for the docket ID.

Submitted comments may also be inspected at FEMA, Office of Chief Counsel, 8 NE, 500 C Street, SW, Washington, DC 20472.

II. Background

On October 5, 2018, the President signed into law the Disaster Recovery Reform Act¹ (DRRA). The DRRA contains approximately 50 provisions which acknowledge the shared responsibility for disaster response and recovery, aim to reduce the complexity of FEMA, and build the nation's capacity for the next catastrophic event. Some of the highlights from the DRRA include additional authority to reduce risk from future disasters after a fire, increase State capacity to manage disaster recovery, provide greater flexibility to survivors with disabilities, and retain skilled response and recovery personnel.

This policy addresses Section 1234 of the DRRA, titled "National Public Infrastructure Pre-Disaster Hazard Mitigation," which amended section 203 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5121 *et seq.* Section 1234 of the DRRA authorizes FEMA to set aside 6 percent of estimated disaster expenses for each major disaster to fund a new grant program, called Building Resilient Infrastructure and Communities (BRIC). The new program will supersede the existing Pre-Disaster Mitigation (PDM) program authorized under Section 203² and will promote a national culture of preparedness through encouraging investments to protect

¹ Pub. L. 115-254, 132 Stat. 3438.

² In August 2019, FEMA posted a PDM fact sheet and notice of funding opportunity (NOFO) to its website, available at <https://www.fema.gov/media-library/assets/documents/182171>. The NOFO clarified that fiscal year (FY) 2019 would be the last year that FEMA offered the PDM program, and that it would supersede that program by BRIC in FY 2020. As both the fact sheet and the NOFO explain, the 2015 Hazard Mitigation Assistance (HMA) Guidance applies to the FY 2019 PDM grant program application cycle.

our communities and infrastructure and strengthening national mitigation capabilities to foster resilience. The following principles will guide the BRIC program:

- Support communities through capability and capacity building
- Encourage and enable innovation
- Promote partnerships
- Enable large projects
- Maintain flexibility
- Provide consistency

The BRIC Policy provides a consistent framework and standing requirements for the program. FEMA will calculate the 6 percent set aside within 180 days after each major disaster and set aside that amount from the Disaster Relief Fund into the National Public Infrastructure Pre-Disaster Mitigation Fund.³ The total amount will vary year to year based on the estimated amount of disaster assistance for each major Presidentially-declared disaster, and the number of Presidentially-declared disasters in each year. On an annual basis, FEMA will assess the amount available in the National Public Infrastructure Pre-Disaster Mitigation Fund and determine what portion of it will be available for the next year's grant cycle. FEMA will announce this determination in the annual Notice of Funding Opportunity (NOFO)⁴ which it will post for a period of time on its website prior to opening the application period.

The Stafford Act limits eligible applicants to States and territories that have had a major disaster declaration in the 7 years prior to the annual application period start date, and federally-recognized Tribes entirely or partially located in a State that has had a

³ 42 U.S.C. 5133(i).

⁴ 2 CFR 200.203 sets forth the requirement to post a NOFO and the required contents of a NOFO.

major disaster declaration in the 7 years prior to the application period start date.⁵

Subapplicants include local governments and non-federally recognized Tribes,⁶ who may apply to States and territories for funding. (Note that federally-recognized Tribes may apply as either applicants or subapplicants).⁷

In addition to determining annually the total amount to be made available for BRIC, FEMA may allocate from that amount to eligible States and territorial applicants, with a specific set-aside for Tribes, an allocation for mitigation capability- and capacity-building activities and mitigation projects, and make the remainder of the funding available competitively for mitigation projects. FEMA may also make a portion of funding available for management costs (costs to manage the grant) and non-financial technical assistance to all eligible entities. Funding would generally be subject to a Federal cost share of up to 75 percent, and up to 90 percent for small and impoverished communities.⁸

Each year, FEMA will provide stakeholders with more detailed information about the program requirements through an annual Notice of Funding Opportunity (NOFO) process.⁹ The NOFO will address a variety of topics, including but not limited to:

- Important application dates
- Specific funding amounts and allowances
- Provision of technical assistance
- Codes and standards activities
- Sample project types

⁵ 42 U.S.C. 5133(g).

⁶ 42 U.S.C. 5122(8).

⁷ 42 U.S.C. 5123.

⁸ 42 U.S.C. 5133(h).

⁹ 2 CFR 200.203.

- Application review process, including competition structure and merit criteria
- Method for determining cost-effectiveness
- Award administration information
- Additional requirements and guidelines

The proposed guidance does not have the force or effect of law.

FEMA seeks comment on the proposed guidance, which is available online at <http://www.regulations.gov> in docket ID FEMA-2019-0018. Based on the comments received, FEMA may make appropriate revisions to the proposed guidance. When or if FEMA issues a final policy, FEMA will publish a notice of availability in the *Federal Register* and make the final guidance available at <http://www.regulations.gov>. The final guidance will not have the force and effect of law and is not meant to bind the public in any way. The guidance document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

Authority: Sec. 1234, Pub. L. 115-254, 132 Stat. 3438.

Pete Gaynor,
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